Accordingly, the certificate issued on 27 March 1989 had referred to the amount due on 16 August 1986, because this was what was in the statement of claim and therefore what the plaintiffs had to prove. I see nothing wrong with this procedure, if the plaintiffs were content to claim only the amount due on 16 August 1986 and to forgo any claim for the period after that. So long as the certificate states a date and the amount due and owing as at that date, it is conclusive evidence of the amount due and owing 'for the time being' at the date mentioned in the statement. In that sense, the position is no different from that in *Papua and New Guinea Development Bank* v *Manton*.[5] In that case, the creditor bank tendered in evidence at the trial itself a certificate dated 21 September 1981 to certify the amount due and owing as at 23 September 1974.

In actual practice, there is usually a considerable period of time between the filing of the statement of claim and the entry of judgment, during which interest is still accumulating; also, in some cases, part payments are made during this period towards the reduction of the debt. Since a certificate issued under a 'conclusive evidence' clause is evidence to prove a debt which is not constant but changes day by day, certificates invariably refer not only to the amount of the debt at the time the statement of claim was filed, but also to the amount at the latest available date at which the debt can be crystallized for judgment to be entered. A practical significance in finally settling on a figure for the debt is that the rate of interest receivable changes from the contractual rate to a possible rate under the Civil Law Act (Cap 43, 1988 Ed) and to another rate under O 42 r 12 of the Rules of the Supreme Court 1970. In my judgment, there is no reason why the plaintiffs cannot issue updated certificates, if need be. This is a common practice, and is done all the time.

Appeal dismissed.

Solicitors: *Ramdas & Wong; Joseph Tan Jude Benny & Co; Shook Lin & Bok.*

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Minister of Labour, Malaysia v Lie Seng Fatt

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 93 OF 1988
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND AJAIB SINGH SCJJ
3 MARCH 1990

Administrative Law — Certiorari — Application to quash decision of Minister of Labour — Minister deciding not to refer dispute to Industrial Court — Discretion of minister — Industrial Relations Act 1967, s 20

Labour Law — Referral to Industrial Court — Minister refusing to refer dispute to Industrial Court — Application for certiorari — Industrial Relations Act 1967, s 20

The respondent in this case had been employed by Koperasi Belia Bersatu Bhd and had held the post of general manager of the company. On 13 November 1986, his appointment as general manager was terminated and he was transferred back to Kin Kwok Daily News Sdn Bhd, a subsidiary of the company. He was dissatisfied with this change and he lodged a complaint to the Director General of Industrial Relations. The matter was referred to the minister who decided that the matter was not fit to be referred to the Industrial Court. The respondent applied for certiorari to quash the decision of the minister and this was granted in the High Court. The minister appealed.

Held, allowing the appeal:
The minister has a discretion under s 20(3) of the Industrial Relations Act 1967 and so long as he exercises the discretion without improper motive, the exercise of discretion must not be interfered with by the court unless he had misdirected himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or that his decision militates against the object of the statute. Otherwise, he has complete discretion to refuse to refer a complaint which is clearly frivolous or vexatious as the complaint in this case was.

[Responden di dalam kes ini telah diambil kerja oleh Koperasi Belia Bersatu Berhad dan ia telah memegang jawatan sebagai pengurus besar syarikat itu. Pada 13 November 1986, perlantikannya itu telah ditamatkan dan ia telah dipindah balik kepada Kin Kwok Daily News Sdn Bhd, anak syarikat syarikat itu. Ia tidak berpuashati dengan pertukaran itu dan telah membuat aduan kepada Ketua Pengarah Perhubungan Perusahaan. Perkara itu telah dirujukkan kepada menteri dan beliau memutuskan bahawa perkara itu tidak layak dirujukkan kepada Mahkamah Perusahaan. Responden telah memohon certiorari untuk membatalkan keputusan menteri dan ini diperkenankan oleh Mahkamah Tinggi. Menteri telah membuat rayuan.

Diputuskan, membenarkan rayuan itu:
Menteri mempunyai budibicara di bawah s 20(3) Akta Perhubungan Perushaan 1967 dan selagi beliau menjalankan budibicaranya tanpa motif yang tidak jujur, penggunaan budibicara tidak boleh diganggu oleh mahkamah kecuali jika beliau menyalah arah dirinya dari segi undang-undang atau telah mengambilkira perkara-perkara yang tidak berkaitan atau tidak mengambilkira perkara-perkara yang berkaitan atau keputusannya itu berlawanan dengan tujuan statut itu. Selain dari itu beliau mem-

punyai budibicara mutlak tidak merujukkan suatu aduan yang jelas remeh atau menyusahkan seperti aduan di dalam kes ini.]

Cases referred to

1 *Padfield & Ors* v *Minister of Agriculture, Fisheries and Food & Ors* [1968] 1 All ER 694 (refd)
2 *Associated Provincial Picture Houses* v *Wednesbury Corp* [1948] 1 KB 223 (folld)

Legislation referred to

Industrial Relations Act 1967 s 20
Rules of the High Court 1980 O 53

Appeal from: Originating Motion No R8-32-121-87 (High Court, Kuala Lumpur)

Kang Hwee Gee (Senior Federal Counsel) for the appellants.
Vincent Chandran for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The respondent, Lie Seng Fatt, filed on 14 November 1987 a notice of motion in the High Court, Kuala Lumpur for an order of certiorari to quash the decision of the Minister of Labour contained in a letter dated 16 September 1987 (at p 34 in appeal record) read in Bahasa Malaysia as follows:

> YB Menteri Buruh telah memutuskan di bawah s 20(3) Akta Perhubungan Perusahaan 1967, bahawa perkara ini tidak menafaat dirujukkan ke Mahkamah Perusahaan.

(The Honourable Minister of Labour has determined under s 20(3) of the Industrial Relations Act 1967 that this matter is not fit to be referred to the Industrial Court.)

The statement pursuant to O 53 of the Rules of the High Court 1980 in support of the notice of motion (at p 12 in appeal record) gave three grounds for the relief sought, namely:

(i) The Minister of Labour did not comply with the rules of natural justice by not giving reasons for his refusal to refer the dispute.
(ii) The Minister of Labour purported to deal with the dispute when Parliament entrusted the function to the Industrial Court under the Industrial Relations Act 1967.
(iii) The Minister of Labour took into account matters which are outside that which he is empowered to do under s 20(3) of the Industrial Relations Act 1967.

During the hearing before the learned judge in the High Court, the first ground was abandoned by counsel — see p 16 in the appeal record. Thus only grounds (ii) and (iii) remained to be considered. The learned judge granted the order of certiorari to quash the decision of the minister.

Section 20 of the Industrial Relations Act 1967 ('the Act') was extensively amended in 1989 but for the purpose of this case the relevant provisions of s 20 of the Act read as follows:

> (1) Where a workman who is not a member of a trade union of workmen *considers that he has been dismissed without just cause or excuse* by his employer he may, within thirty days of the dismissal, make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.
>
> (2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.
>
> (3) Upon receiving the notification of the Director General under sub-s (2), *the Minister may, if he thinks fit, refer the representations to the Court* for an award.

The crux of the matter here is the operation of the words 'the minister may, if he thinks fit, refer the representations to the court' in s 20(3) of the Act.

What is the extent of the power of the minister to refer or not to refer the representations to the Industrial Court? It would seem clear that a wide discretion is conferred on the Minister of Labour to refer or not to refer a dispute to the Industrial Court but is that discretion unfettered?

It would be useful to recapitulate at this stage on the undisputed background facts of the case. The respondent was employed by Koperasi Belia Bersatu Bhd, a company, as a project engineer of the company on 28 November 1979. On 9 July 1980, he was appointed as the deputy general manager of Koperasi Belia Bhd. On 15 April 1981, he was appointed as acting deputy general manager of Kin Kwok Daily News Sdn Bhd, a subsidiary of Koperasi Belia Bersatu Bhd. On 7 September 1982, he was appointed as general manager of Koperasi Belia Bersatu Bhd. By a letter dated 13 November 1986, his appointment as general manager of Koperasi Belia Bersatu Bhd was terminated and he was transferred back to Kin Kwok Daily News Sdn Bhd. The respondent was dissatisfied with this change and as advised by his solicitors he lodged a complaint to the Director General of Industrial Relations pursuant to s 20(1) of the Act as he considered he had been dismissed without just cause and excuse.

There is no question that the power of the minister under s 20(3) of the Act is wide and the language used by the legislature would seem to confer on the minister a wide discretion whether to refer or not to refer a dispute to the Industrial Court depending on the facts of each case provided of course he has acted bona fide, that is without any improper motive, and he has not taken into account extraneous or irrelevant matters. He has an unfettered discretion but should not be exercised so as to frustrate the object of the statute itself.

In *Padfield & Ors* v *Minister of Agriculture, Fisheries and Food & Ors*,[1] the appellants there made a complaint to

the minister and asked that the complaint be referred to a committee of investigation established under the statute concerned. The words used by the statute there were 'if the minister in any case so directs'. The minister declined to do so. The minister gave his reasons for refusing to refer the matter and stated also that he did not consider the matter suitable for such investigation. The Divisional Court granted an order of mandamus directed to the minister requiring him to refer the matter to the committee of investigation. The case went up to the Court of Appeal (Diplock LJ, Russell LJ and Denning MR (dissenting)) which set aside the order of the Divisional Court. The matter then went up to the House of Lords. Lord Reid, in his leading speech, allowed the appeal and the matter was remitted back to the Queen's Bench Division with the direction to require the minister to consider the complaint of the appellants according to law. Lord Hodson, Lord Pearce and Lord Upjohn also concluded that the appeal should be allowed. Lord Morris of Borth-Y-Gest, however, in his speech dismissed the appeal.

The question before the House of Lords was the nature and extent of the minister's duty in deciding whether to refer to the committee of investigation a complaint as to the operation of the milk marketing scheme. The minister contended that his only duty was to consider the complaint fairly and that he was given an unfettered discretion in the matter. The appellants however contended that it was the minister's duty to refer every genuine and substantial complaint or alternatively the discretion was not unfettered and contended that the minister's refusal was influenced by his having taken into account extraneous or irrelevant considerations.

Addressing himself on the issue, Lord Reid in his speech at p 699 said:

> In my view the appellants' first contention goes too far. There are a number of reasons which would justify the minister in refusing to refer a complaint. For example, he might consider it more suitable for arbitration, or he might consider that in an earlier case the committee of investigation had already rejected a substantially similar complaint, or he might think the complaint to be frivolous or vexatious.

In *Padfield*,[1] the first reason given by the minister was that the complaint was unsuitable for investigation because it raised wide issues. It was clear to Lord Reid that this was a mis-direction. Lord Reid concluded that the minister's discretion was not unlimited and that it had been used by the minister in a manner which was not in accord with the intention of the statute concerned and therefore the minister's discretion had never been properly exercised according to law.

A general guideline on the functions of the court before interfering in the exercise of an executive discretion can be found in the judgment of Lord Greene MR in the celebrated case of *Associated Provincial Picture Houses Ltd* v *Wednesbury Corp.*[2] The courts can only interfere with an act of executive authority if it be shown that the authority has contravened the law. Secondly, the court is not a court of appeal in such matters. Thirdly, the exercise of such discretion is governed by certain principles and so long as the exercise is within the four corners of these principles, the discretion is absolute and cannot be questioned in a court of law. Lord Greene elaborated on those principles and they are that the exercise of the discretion must be a real exercise of the discretion and that the authority exercising the discretion must consider matters required to be considered and disregard irrelevant collateral matters. If the authority fails to observe these principles, the exercise of discretion cannot be said to be 'reasonable'. Lord Greene then summed up his guideline as follows:

> The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them.

The appellant in our case, having abandoned ground (i), has only grounds (ii) and (iii) in support of his case. Paragraphs 11 and 12 of his affidavit in support of the notice of motion read as follows:

> 11 By the letter dated 16 September 1987, I was informed that the Minister of Labour had refused to refer the matter to the Industrial Court under s 20(3) of the Industrial Relations Act 1967. No reasons were given. A copy of the letter is now produced and marked as LSF-8.
>
> 12 I verily believe that the minister had decided on a question of law which usurped the powers of the Industrial Court under the Industrial Relations Act 1967 and consequently committed the errors going to jurisdiction.

The minister in his letter in fact gave the reason why he did not refer the matter to the Industrial Court. It would seem clear that the reason was that he considered the matter not a fit and proper one to be referred. When arriving at this decision, he must have considered the facts surrounding the circumstances leading to the complaint the appellant made to the Director General.

As regards the allegation that the minister usurped the powers of the Industrial Court, we do not see any basis for us to come to that conclusion. In our view, the minister must have considered that the complaint was not a fit and proper one for reference to the Industrial Court based on the facts before him.

The facts show that there was really no dismissal in the true sense of the word. The appellant had been transferred to a post within the control and sphere of the parent company, Koperasi Belia Bersatu Bhd, and in the process the appellant could have been given position which he considered inferior to the previous one. The letter from

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Koperasi Belia Bersatu Bhd to the appellant dated 13 November 1986 (p 31 in the appeal record), in our view, puts the position clear. The letter reads as follows:

> I am directed by the board to inform you that the board had terminated your position as general manager in Kosatu with immediate effect. As you were all this while seconded as acting general manager of Kin Kwok Daily News Sdn Bhd. The board now appointed you as full-time general manager of Kin Kwok Daily News Sdn Bhd.
>
> Kindly arrange to hand over motor vehicle bearing registration no WBE 4937 and other relevant documents of Kosatu and its subsidiaries at your earliest possible.

The minister had a discretion under s 20(3) of the Act and that is not in dispute. The issue is whether the discretion is unfettered. To say it is an unfettered discretion is a contradiction in terms. Unfettered discretion is another name for arbitrariness.

The minister's discretion under s 20(3) is wide but not unlimited. As stated earlier, so long as he exercises the discretion without improper motive, the exercise of discretion must not be interfered with by the court unless he had mis-directed himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or that his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse to refer a complaint which is clearly frivolous or vexatious which in our view this is one.

The appeal is accordingly allowed with costs here and below. The order of the learned judge is set aside.

Appeal allowed.

Solicitors: *Chan Yat Hee & Associates.*

Reported by *Prof Ahmad Ibrahim*

Malayan Banking Bhd & Anor v Swasta Jaya Sdn Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-315-1989
LEE HUN HOE CJ (BORNEO), MOHAMED AZMI AND GUNN CHIT TUAN SCJJ
10 FEBRUARY 1990

Civil Procedure — Judgment in default of appearance — Stamped copy of memorandum of appearance not handed back on same day — Appearances not registered in cause book — Irregularities in High Court registry — Judgment not regular — Judgment in default set aside — Rules of the High Court 1980, O 2, O 10, O 12 & O 13

The plaintiffs (the respondents) had sued the defendants for breach of a loan agreement and served the writ on the defendants on 14 April 1989. The third defendant entered appearance on 17 June 1989 while the first and second defendants did so on 21 June 1989. On 19 June 1989, the defendants' solicitors sent a copy of the memorandum of appearance to the plaintiffs' solicitors in Ipoh. On 21 June 1989, they sent another copy of the memorandum of appearance to the plaintiff's solicitors in Ipoh. They did not send the stamped copy on the same day as they did not get back the stamped copy from the registry of the High Court on the same day. The plaintiffs made a search on 22 June 1989 and found no memorandum of appearance. So on the same day they obtained two certificates of non-appearance against the second and third defendants and on that day they obtained two judgments in default of appearance each for the sum of $14,250,000 against the second and third defendants. The plaintiffs then started execution proceedings against the second and third defendants. On the same day, the defendants applied to have the judgment in default of appearance and the execution proceedings set aside. An interim stay of execution was granted and was the senior assistant registrar, who heard the defendants' application, set aside the judgment in default of appearance against the second and third defendants and gave them 14 days to file their defence. On appeal, the judge of the High Court allowed the appeal and set aside the order of the senior assistant registrar. The second and third defendants appealed.

Held, allowing the appeal:

(1) In this case, the registry did not comply with the standing practice of handing back the stamped copy of the memorandum of appearance on the same day so it was not possible for the defendants to send it to the plaintiffs on the same day. If the registry had registered the appearances in the cause book, then the plaintiffs would not have been able to obtain the certificate of non-appearance. The learned judge considered that the defendants should have written to the plaintiff's solicitors to inform them of the nature of the delay and extending a copy to the High Court Registry. The defendants did their best by sending a copy of the memorandum of appearance which would have put the plaintiffs on the alert.

(2) The fact that the defendants were at fault does not necessarily mean that they must be penalized at all costs, particularly when the registry was as much, if not more, to blame. The learned judge should have caused an investigation to be made at the registry instead of putting all the blame on the defendants. In the light of the irregularities, the court could not agree with the learned judge that the judgments were entered regularly as appearances were clearly entered and should have been registered by the registry. As an injustice had been done, the appeal should be allowed and the judgment of the learned judge set aside and the order of the senior assistant registrar restored.